10. The only remote justification for fearing anticompetitive conduct from the BOCs as they move into out-of-region long-distance service is that they might use their leverage in connecting calls that are terminated in their own regions. Since some of the out-of-region long-distance service will inevitably involve calls to their own regions, the Commission asks whether the BOCs might use their local switching facilities to discriminate against calls handled by their out-of-region competitors.[8] There are at least two reasons why they will not.

11. First, it is far from clear that the BOCs can discriminate among calls that originate with their interexchange competitors but from markets in which the BOC does not operate. But a BOC surely would not want to degrade all of, say, AT&T's connections just to exert leverage over AT&T in the out-of-region services in which the BOC and AT&T compete. Such degradation would have to be sufficiently severe that customers would notice it. In addition, the BOC would somehow have to prevent customers from recognizing that the quality degradation is due to the BOC connection. Surely, AT&T or any other interexchange carrier would have the ability to recognize this degradation and to seek other sources of local access, thereby reducing the BOC's share of access services in an increasingly competitive local market. Finally, if the degradation were so severe as be noticed by the customer and the interexchange carrier, both would surely complain to the Commission and to state regulatory authorities. It is thus very unlikely that the BOCs, facing the prospects of new local competition, would want to degrade the quality of a major service offered to interexchange carriers and to incur the dissatisfaction of their local subscriber base. And it is simply inconceivable that they could so without detection

[8] Notice at 12.

and the penalties that would result.

12. Second, there is now sufficient evidence that the BOCs do not use their local exchange position to impede competition by discriminating against their rivals in other telecommunications markets. For example, in the cellular market, each BOC faces a competitor who does not own local-exchange facilities and who must, therefore, terminate a large share of its cellular traffic on the BOC's wireline local-exchange network. If the BOCs discriminated against their cellular rivals in terminating their calls, the BOCs would surely be able to obtain the vast majority of the business in cellular markets in which they also operate as local-exchange carriers. Yet, the BOCs' cellular operations do not obtain a significantly larger share than their competitors in most cellular markets. Indeed, the available data suggest that the BOCs' in-region cellular market shares fluctuate around the 50 percent level, change over time, but do not tend to be systematically above 50 percent.[9]

13. Other examples of the BOCs' not impeding competition in markets requiring the use of their local networks may be found in interstate interLATA services in the corridors that Bell Atlantic has been allowed to serve, in voice messaging services, and even in the sale of customer premises equipment (CPE). In the interstate interLATA corridors, Bell Atlantic has less than 10 percent of the customers and less than 20 percent of revenues.[10] In the market for voice-

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[9]See Herschel Shosteck, The Cellular Market Quarterly Review, March 1994, Figure 3.2.

[10] Petition to Regulate Bell Atlantic as a Nondominant Provider of Interstate InterLATA Corridor Service, DA 95-1666, Petition at 7 (filed July 7, 1995).

of their local networks may be found in interstate interLATA services in the corridors that Bell Atlantic has been allowed to serve, in voice messaging services, and even in the sale of customer premises equipment (CPE). In the interstate interLATA corridors, Bell Atlantic has less than 10 percent of the customers and less than 20 percent of revenues.[10] In the market for voice-messaging services, the independent national providers have continued to enjoy substantial revenue growth despite the entry of the BOCs in 1988. The three largest independents experienced a four-fold increase in revenues between 1990 and 1994.[11] Seven years after entering, the BOCs still have less than 50 percent of the market.[12] In the CPE market, the BOCs have only 15 percent of PBX sales and less than 9 percent of key/hybrid telephone sales.[13] Thus, in none of these markets have the BOCs used their position as local-exchange companies in an anticompetitive fashion.

14. For these reasons, it is very unlikely that the BOCs would attempt to discriminate against their interexchange competitors in originating or terminating their calls so as to enhance their competitive position in out-of-region long-distance service and inconceivable that they would succeed if they did attempt such a strategy. Thus, there is no need for the Commission to impose a separate-subsidiary requirement on the BOCs' out-of-region. A separate subsidiary

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[10] Petition to Regulate Bell Atlantic as a Nondominant Provider of Interstate InterLATA Corridor Service, DA 95-1666, Petition at 7 (filed July 7, 1995).

[11] Probe Research, Voice Processing: The Service Providers, 1995, Table 3-3.

[12] Multimedia Telecommunications Association, 1996 Multimedia Telecommunications Market Review and Forecast, 1996, p. 124.

[13] Id., pp. 102 and 113.

provision forbidding joint ownership of transmission and switching facilities between a BOC's long-distance operations and its in-region local business, regardless of whether the long-distance service operates in or out of region. Such a requirement discourages the most efficient use of facilities, resulting in higher costs and, therefore, higher prices. Because there are other adequate safeguards already in place, such a prohibition would impose this burden needlessly.

Conclusion

16. The Commission has wisely determined that the BOCs will be nondominant in out-of-region interstate long-distance services. Given this sensible conclusion, there is simply no need to impose the requirement of separate subsidiaries for such operations. There is no anticompetitive threat to be avoided by BOC entry into these markets, a fact that the Congress recognized when it allowed the BOCs to enter these markets immediately without any competitive checklist.

Further than this, affiant sayeth not.

Robert W. Crandall

Subscribed and sworn before me on this 13th day of March, 1996.

Notary Public

My commission expires:

[illegible]

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Bell Operating Company	)	CC Docket No. 96-21
Provision of Out-of-Region	)	
Interstate, Interexchange Services	)	

BELL ATLANTIC REPLY COMMENTS

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March 25, 1996

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Introduction and Summary

The Commission must resist efforts by the long distance providers to shackle Bell Atlantic and other new entrants to the long distance business with a separate subsidiary requirement or other forms of excessive and burdensome regulation. The entry of Bell Atlantic and the other Bell operating companies is the key to bringing badly needed competition to long distance services. Congress recognized this need by authorizing the Bell operating companies to begin providing long distance service. The incumbent long distance carries seek to game the regulatory process and advocate unnecessary regulatory burdens in order to disadvantage their new competitors. In order to promote fair competition, the Commission must allow Bell Atlantic and other newcomers to provide service under the same regulatory rules as the established long distance providers.

There can be no doubt that Bell Atlantic and the other Bell operating companies have "no ability to raise [long distance] prices by restricting output." Indeed, none of the commenters offer any evidence that Bell operating companies can exert such control. As a result, according to the Commission's own criteria, Bell Atlantic is entitled to be regulated as a nondominant provider of out-of-region long distance service.

Incumbent long distance companies nonetheless argue for costly and more burdensome separation requirements. In doing so, however, they fail to explain how Bell Atlantic and other companies could recover supposed cross subsidies in rates, or how such activities could have a real impact on such entrenched enterprises as AT&T and MCI. Thus, the proposed separate subsidiary requirements are unnecessary, and the additional separation requirements advocated by the incumbent long distance confederacy are simply competitive obstacles designed to hinder new market entrants.

Similarly, claims that Bell operating companies will use their local service to discriminate against other long distance providers ignore market realities. Even if sabotaging their own access service were possible, which it is not, it would unleash such a regulatory and customer backlash that the inescapable and substantial costs would make the theoretical benefits trivial in comparison.

The Commission should also reject arguments that it impose burdensome regulations that go beyond the limited issues raised in this docket. There is no basis for any separate subsidiary requirement here, much less a basis to extend such a requirement to other services or add other constraints to Bell Atlantic's ability to offer long distance service competition.

As explained in the attached reply affidavit of Dr. Robert W. Crandall, there is "no reason why the Commission should now develop its policies under the assumption that the BOCs will emulate the behavior of AT&T prior to 1982."[1] Because Bell Atlantic's and other Bell operating companies' provision of long distance service is "clearly pro-competitive,"[2] they should be allowed to provide service without arbitrary and unnecessary regulatory impediments.

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1 Reply Affidavit of Robert W. Crandall, ¶ 9 (attached) ("Crandall Reply").

2 *Id.* at ¶ 3.

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BELL ATLANTIC REPLY COMMENTS

The Commission must resist efforts by the long distance incumbents to shackle Bell Atlantic and other new entrants with a separate subsidiary requirement or other forms of excessive and burdensome regulation. Excessive regulation would undermine the new competition authorized by the Telecommunications Act of 1996 before it even begins. There is no legitimate basis to impose such burdens. As Bell Atlantic explained in its initial comments, Bell Atlantic and other Bell operating companies enter the market as nondominant providers of interLATA services and there is no risk that they will, or can, impede competition.

In fact, as Congress recognized in its passage of the Telecommunications Act, entry of the Bell operating companies will interject much needed competition into the long distance market. According to Professor Paul W. MacAvoy, prices in the long distance market have converged to the point where AT&T's prices are virtually identical to its competition.[3] The entry of Bell Atlantic and the other Bell operating companies is the key to breaking that cycle. As a result, the regulatory

3 Paul W. MacAvoy, "The Failure of Antitrust and Regulation to Establish Competition in Markets for Long-Distance Telephone Services," Yale School of Management Working Paper 44 at 95-96 (Nov. 1995). This convergence is so clear that recent price increases by ***AT&T*** have produced jumps in the stock prices of ***MCI and Sprint***. ***Id.*** at 133-134.

requirements advocated by the incumbent long distance confederacy are not only unnecessary, they are affirmatively harmful.

The long distance incumbents argue that Bell Atlantic and other newcomers should be saddled with regulatory requirements that AT&T and every other long distance provider are spared. They argue that such disparate regulatory treatment is justified because of the newcomers' regulatory status as dominant carriers for local service. Their factual claims concerning the state of competition for local service miss changes in the marketplace however, and totally ignore the remaking of the local markets that is engendered by passage of the Act.[4] Regardless, the state of ***local*** competition is irrelevant to the regulatory treatment of ***long distance*** services. This is doubly true in this docket, where the only services at issue are geographically separate from where the companies offer local service.

1. Bell Atlantic is Not a Dominant Provider of interLATA Services

As Bell Atlantic and other commenters explained in the initial comments,[5] there can be no doubt that local telephone companies providing out-of-region long distance service have no "ability to raise [long distance] prices by restricting output."[6] Indeed, none of the commenters offer any evidence that Bell operating companies can exert such control. As a result, according to the

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4 For example, AT&T recently announced that it has filed to be a local service provider in all 50 states. AT&T Press Release, "AT&T completes initial steps to offer local phone service" (rel. Mar. 4, 1996).

5 ***See, e.g.,*** Comments of Bell Atlantic at 2-3, Ameritech at 2-5, SBC Communications, Inc. at 8-9 (filed Mar. 13, 1996).

6 ***Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor***, 95 FCC 2d 554, 558 (1983) (quoting P. Areeda & D. Turner, Antitrust Law 322 (1978)).

Commission's own criteria, Bell Atlantic is entitled to be regulated as a nondominant provider of out-of-region long distance service.

AT&T argues that because the Commission has previously found there to be a single nationwide long distance market, Bell operating companies' out-of-region service must be considered jointly with their in-region long distance service and as a result, they should be considered dominant providers of long distance.[7] In doing so, however, AT&T conveniently ignores the fact that the only issues in ***this*** proceeding is whether a Bell company providing out-of-region service could exercise market power in the nationwide long distance market. Even AT&T implicitly concedes it can not. Moreover, there are at least two reasons why focusing on the national market makes the case for nondominant treatment even stronger.

First, because in-region relief has not been granted yet, the ***only*** stand-alone long distance service currently authorized under the 1996 Act is out-of-region.[8] Given Bell Atlantic and other companies' newcomer status, they should be considered nondominant regardless of the geographic size of the market. When evaluated on a national scale where large carriers like AT&T and MCI have already spent hundreds of millions to build nationwide recognition and loyalty for their long distance services, however, there can be no doubt that the newcomers are not dominant providers.

Second, even after Bell Atlantic is authorized to provide in-region service, it will still be a nondominant provider of long distance. If a market is defined as nationwide, Bell Atlantic is the

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7 AT&T Comments at 4-5 (filed Mar. 13, 1996).

8 Bell Atlantic also is authorized to provide service in certain corridors connecting New Jersey with Pennsylvania and New York. But Bell Atlantic has no market power in its provision of this service and has a petition pending to be regulated as nondominant. ***Petition to Regulate Bell Atlantic as a Nondominant Provider of Interstate interLATA Corridor Service***, DA 95-1666, Petition (filed July 7, 1995).

provider of local service to less than a seventh of that market, and initially will be the long distance provider to a negligible number of customers. Regardless of market definition, Bell Atlantic's local services will continue under price cap, equal access and other regulatory requirements that eliminate the ability to exercise market power in the long-distance market, even in its own region. Moreover, before Bell Atlantic will be authorized as a long distance provider in-region, it must first meet the legislative checklist that will assure that any lingering arguments of a local bottleneck have been put to rest.[9] Thus, regardless of whether Bell Atlantic is authorized to provide in-region service, it should be considered a nondominant provider of long distance.

2. There is No Danger of Cross Subsidy

In its initial comments, and in the supporting affidavit of Dr. Robert Crandall, Bell Atlantic explained why cross subsidy and predation make no sense and are impossible for out-of-region long distance service providers.[10] Among other reasons are the geographic separation of the services, the advent of price cap regulation and the inability to drive large competitors out of the market. Nothing in the opposing comments undercuts these fundamental points. While current long distance companies are expansive in arguing for costly and more burdensome separation requirements, they do not attempt to explain how Bell Atlantic and other companies could recover

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9 *See* Act, § 151 (a), Part III, Sec. 271 (c)(2)(B).

10 Bell Atlantic Comments at 6-7, attached Affidavit of Robert W. Crandall, ¶¶ 7-10 ("Crandall Affidavit").

supposed cross subsidies in rates,[11] or how such activities could have a real impact on such entrenched enterprises as AT&T and MCI. Thus, the proposed separate subsidiary requirements are unnecessary, and the additional separation requirements advocated by the incumbent long distance confederacy[12] are simply competitive obstacles designed to hinder new market entrants.

MCI and AT&T go even further and argue that the cost allocation and accounting requirements imposed on regulated local exchange carriers ("LECs") should be imposed on their long distance affiliates, even for costs that have no relation to LEC services.[13] These alleged safeguards have nothing to do with preventing LEC cross subsidies. LECs are already under stringent cost allocation requirements for their own costs.[14] To the extent a long distance service has any transaction that could impact LEC service costs, those amounts are strictly accounted for in accordance with existing rules. Regulating a long distance affiliate with the same stringent cost rules does nothing to add to such protection. Instead, it accounts for costs relating to transactions between long distance and other nonregulated nondominant services. There can be no danger of

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11 The Public Utilities Commission of Ohio ("PUC") argues that its experience over "the last ten years" mandates specific separation requirements (p. 4) (comments filed Mar. 13, 1996). As Dr. Crandall explains in his attached reply affidavit, this view ignores changes in regulation over that same time period. Crandall Reply, ¶¶ 7-8. The FCC has moved to price caps with sharing, and more recently toward pure price caps. State regulators, including the Ohio PUC have made a similar evolution. In the current regulatory environment, it makes no sense to impose burdensome separate subsidiary requirements just to alleviate theoretical concerns that were never valid and have lost all pretense of legitimacy.

12 ***See, e.g.***, Comments of Excel Telecommunications, Inc. ("Excel") at 6 (separate financial credit); Comments of the Telecommunications Resellers Association ("TRA") at 21 (separate office space); Comments of Cable & Wireless, Inc. at 3 (separate personnel) (filed Mar. 13, 1996).

13 AT&T Comments at 8-9; Comments of MCI Telecommunications Corp. at 18-23 (filed Mar. 13, 1996).

14 In a world of pure price caps, where costs do not impact the level of regulated rates, those regulations are also unnecessary burdens. ***See*** Bell Atlantic Comments at 6-7.

abuse among services where there is no regulation of costs or prices. The Commission has previously rejected product specific cost allocation for nonregulated services.[15] There can be no justification for imposing such a requirement here.

3. There is No Danger of Discrimination

In its initial comments. Bell Atlantic also explained why it is a fanciful error to claim that Bell Atlantic would somehow surreptitiously sabotage its own access service in order to gain a market advantage for long distance service.[16] The parade of horribles concocted by the incumbent long distance confederation do not alter that analysis.

For example. TRA and Excel argue that Bell operating companies could limit access to signaling or network information, or delay provisioning service,[17] but they fail to explain how the companies could do so consistent with existing Title II regulation of the LECs, or how they would avoid a market or regulatory backlash against their access services. Regardless, none of the regulatory burdens suggested by the long distance incumbents would address this supposed problem because they would require burdensome structural separation, but add nothing to the rules that already forbid unreasonable discrimination.

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15 "It is not [the Commission's] purpose. nor should it be [the Commission's] purpose, to seek to attribute costs to particular nonregulated activities for purposes of establishing [sic] relationship between costs and price." ***Separation of Costs of Regulated Telephone Service From Costs of Nonregulated Activities***, 2 FCC Rcd 1298, 1304 (1987).

16 Bell Atlantic Comments at 7-8; Crandall Affidavit, ¶ 11.

17 ***See*** Excel Comments at 4; TRA Comments at 14.

Similarly, AT&T and CompTel argue that LECs would use their local service to bully corporate customers into using affiliated long distance.[18] But, as Dr. Crandall explains in his attached reply affidavit, such action would only serve to undermine the LECs competitive position in the local market and would not result in the type of customer loyalty needed to survive in this increasingly more competitive environment.[19]

The Commission also should reject efforts to prevent Bell Atlantic and other Bell operating companies from jointly marketing their various services to the extent authorized in the Act. Offering the option of packaged groups of services to customers is one of the benefits of new competition. After a transition period, the Act expressly allows joint marketing of long distance services with LEC services.[20] Joint marketing of various services will allow Bell Atlantic to compete on a more equal footing with full service providers such as AT&T, which plan to make "bundled offers like the industry has never seen before."[21] Indeed, the Commission has recently gone further and proposed allowing nondominant long distance carriers to bundle their transport service with customer premises equipment ("CPE").[22] The effort of the long distance incumbents to erect regulatory roadblocks in front of Bell Atlantic's ability to jointly market its services is

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18 Comments of the Competitive Telecommunications Assoc. ("CompTel") at 4-5 (filed Mar. 13, 1996); AT&T Comments at 6.

19 *See* Crandall Reply, ¶ 6 ("[I]t would be folly for the BOCs to abuse their customers in this fashion").

20 Act, § 151, Part III, Sec. 272, (g)(2).

21 AT&T Chairman Robert E. Allen in AT&T News Release "AT&T's Allen outlines plans to enter local telephone market" (rel. Feb. 8, 1996). According to Allen, AT&T will "offer business and consumers bundles of services that will combine local and long distance, wireless, on-line services, even television. As much or as little as the customer wants."

22 See FCC News, "Commission Proposes That Long Distance Companies Be Relieved of Tariff Filing Requirement" (rel. March 21, 1996).

nothing more than an attempt to obtain a competitive advantage through the regulatory process.[23] This denies consumers the ability to choose and serves no one's interest but the incumbent providers.

4. Do Not Place Added Burdens on Other Services

While this docket was confined to the issue of interim regulation of out-of-region interLATA services, several commenters have argued for burdensome regulations that go beyond that limited issue. In addition to being procedurally flawed, the arguments for these additional burdens are substantively wrong.

For example, CompTel argues that Bell operating companies providing long distance service should not be allowed to complete collect calls, third-party billed calls or calling card calls to terminating numbers located within the companies local region until in-region relief has been granted.[24] This argument is directly contrary to the Act, which allows Bell companies to provide out-of-region long distance service immediately.[25] The only exception is 800 service or certain private line services.[26] But this exception only applies where the service allows "the

[23] There is no need in this docket to address the separate issue of use of customer proprietary network information, which the Commission has already indicated will be dealt with in a separate rulemaking "in the near future." ***Amendment of the Commission's Rules to Establish New Personal Communications Services***, Order, GN Docket No. 90-314, DA 96-256, ¶ 9 (rel. Feb. 27, 1996).

[24] CompTel Comments at 13.

[25] Act, § 151 (a), Part III, Sec. 271 (b)(2).

[26] ***Id.***, Sec. 271 (j).